

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 236

Introduced by Assembly Member Bermudez

February 7, 2005

An act to add and repeal Section 6357.7 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 236, as amended, Bermudez. Sales and use taxes: exemptions: fuel and petroleum products: air common carriers.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for ~~immediate consumption or shipment~~ use in the conduct of its business on an international flight.

This bill would, for calendar years beginning on or after January 1, 2006, and before January 1, 2010, exempt from those state taxes the gross receipts in excess of \$0.632 per gallon derived from the sale in this state of, and the storage, use, or other consumption in this state of, fuel and petroleum products sold to or purchased by an air common carrier on a domestic flight, as specified.

This bill would also require the State Board of Equalization, beginning on January 1, 2007, and annually thereafter, to submit a report to the Legislature setting forth the state fiscal impact of the exemption.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6357.7 is added to the Revenue and
2 Taxation Code, to read:

3 6357.7. (a) From January 1, 2006, to December 31, 2009,
4 inclusive, there are exempted from the taxes imposed by this
5 part, those gross receipts in excess of sixty-three and two-tenths
6 cents (\$0.632) per gallon derived from the sale in this state of, or
7 the storage, use, or other consumption in this state of, fuel and
8 petroleum products sold to or purchased by an air common
9 carrier for ~~immediate consumption or shipment~~ use in the
10 conduct of its business as an air ~~common carrier~~, common
11 carrier on a domestic flight.

12 (b) To qualify for the exemption, the air common carrier shall
13 furnish to the seller an exemption certificate in writing ~~stating the~~
14 ~~quantity of fuel and petroleum products claimed as exempt~~. That
15 certificate shall bear the purchaser's valid seller's permit number
16 or valid fuel exemption registration number and shall be
17 substantially in the form prescribed by the board. Acceptance in
18 good faith of that certificate shall relieve the seller from liability
19 for the sales tax.

20 (c) For the purposes of this section, the following definitions
21 apply:

22 ~~(1) "Immediate consumption or shipment," as used in this~~
23 ~~section, means that the delivery of the fuel and petroleum~~
24 ~~products by the seller is directly into an aircraft for consumption~~
25 ~~or transportation on a domestic flight and not for storage by the~~
26 ~~purchaser or any third party.~~

27 ~~(2)–~~

1 (1) "Domestic flight," as used in this section, is a flight whose
2 final destination is a point inside of the United States, including
3 its territories.

4 ~~(3)~~

5 (2) "Air common carrier" has the same meaning as that set
6 forth in Section 23046 of the Business and Professions Code.

7 (d) Any air common carrier claiming exemption under this
8 section, who is not required to hold a valid seller's permit, shall
9 be required to register with the board and obtain a fuel exemption
10 registration number, and shall be required to file returns as the
11 board may prescribe, either if the board notifies the carrier that
12 returns must be filed or if the carrier is liable for taxes based
13 upon consumption or transportation of fuel or petroleum products
14 erroneously claimed as exempt under this section.

15 (e) An air common carrier claiming an exemption under this
16 section upon request, shall make available to the board records,
17 including, but not limited to, a copy of a log abstract, an air
18 waybill, or a cargo manifest, documenting its consumption or
19 transportation of the fuel or petroleum products on a domestic
20 flight and the amount claimed as exempt. If the carrier fails to
21 provide these records upon request, the board may revoke the
22 carrier's fuel exemption registration number.

23 (f) The board may require any air common carrier claiming an
24 exemption under this section and required to obtain a fuel
25 exemption registration number, to place with it such security as
26 the board may determine pursuant to Section 6701.

27 (g) Pursuant to this section, any use of the fuel and petroleum
28 products by the purchasing carrier, other than that incident to the
29 delivery of the fuel and petroleum products to the carrier and the
30 consumption or transportation of the fuel and petroleum products
31 by the carrier on a domestic flight for use in the conduct of its
32 business as a common carrier, or a failure of the carrier to
33 document its consumption or transportation of the fuel and
34 petroleum products on a domestic flight, shall subject the carrier
35 to liability for payment of sales tax as if it were a retailer making
36 a retail sale of the property at the time of that use or failure, and
37 the sales price of the property to it shall be deemed to be the
38 gross receipts from the retail sale.

39 (h) On January 1, 2007, and annually thereafter, the State
40 Board of Equalization shall submit a report to the Legislature

1 setting forth the state fiscal impact of the exemption allowed
2 under this section.

3 (i) This section shall remain in effect only until January 1,
4 2010, and as of that date is repealed.

5 SEC. 2. Notwithstanding Section 2230 of the Revenue and
6 Taxation Code, no appropriation is made by this act and the state
7 shall not reimburse any local agency for any sales and use tax
8 revenues lost by it under this act.

9 SEC. 3. This act provides for a tax levy within the meaning of
10 Article IV of the Constitution and shall go into immediate effect.